TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 226.

GILA BEND RESERVOIR AND IRRIGATION COMPANY, APPELLANT,

vs.

THE GILA WATER COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED APRIL 13, 1905.

(19,708.)

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1 In the Supreme Court of the Territory of Arizona. (January Term, 1903.)

GILA BEND RESERVOIR AND IRRIGATION COMPANY (a Corporation), Plaintiff and Appellant,

vs.

PEORIA CANAL COMPANY (a Corporation), THE ARIZONA CONSTRUCTION COMPANY (a Corporation), JAMES M'MILLAN, Receiver, J. C. WYND, H. C. MANN, J. B. GREENHUT, C. F. AINSWORTH, W. E. THORNE, C. E. CROWLEY, VALLEY CANAL AND LAND COMPANY (a Corporation), Defendants, and THE GILA WATER COMPANY (a Corporation), Defendant and Appellee.

Appealed from District Court of Maricopa County.

Transcript of Record.

The above named plaintiff, complains of the above named defendants, and for cause of action alleges:

I.

That plaintiff, the Gila Bend Reservoir and Irrigation Company and the defendants, the Peoria Canal Company, Valley Canal
2 and Land Company and the Gila Water Company, are corporations duly incorporated under the laws of Arizona and have heretofore been doing business in the County of Maricopa, Territory of Arizona.

That defendant, the Arizona Construction Company, is a corporation duly incorporated under the laws of the State of Illinois and has heretofore been doing business in said County of Maricopa.

That C. F. Ainsworth is a resident of Phœnix, Maricopa County. That James McMillan, Receiver, J. C. Wynd, H. C. Mann, J. B. Greenhut, W. E. Thorne and C. E. Crowley are non-residents.

II.

That plaintiff is the owner in fee of the following described realty:

Description.

The southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section twenty-eight (28), and the north half of the southwest quarter of section twenty-seven (27), all in township two (2) south, range five (5) west, of the Gila and Salt River Base and Meridian;

Also all those certain appropriations of water from the Gila river at a point on the east and west bank thereof, in township two (2)

south, range four (4) west of the Gila and Salt River Base and Meridian; made by G. W. Webb, April 28th, 1881, and the notice thereof recorded in book 2 of Misc. records, page 237, county records of Maricopa county;

Also, that certain other location and appropriation of seventy-five thousand miner's inches of water taken from the Gila river at or below the base of Power's Butte, Maricopa county, about one-half mile below the mouth of the Hassayampa river, such appropriation having been made on September 8th, 1887, by Wells H. Bates, De Witt C. Bates, R. C. Powers, and Royal A. Johnson, and recorded in book 1 of canals, page 120, county records of Maricopa county;

Also, that certain other water location of five thousand cubic feet per second constant flow to be taken from the Gila river by impounding same and by means of a dam or dams from the Gila river on the northeast quarter of section twenty-eight (28), township two (2) south, range five (5) west, the same having been appropriated by R. C. Powers on April 24th, 1889, and the notice thereof having been record in book 1 of canals, page 154, county records of Maricopa county;

Also, that certain other location of dam site and canal head, located at a point about twenty-three (23) miles north of Gila Bend
3 Station, in Maricopa county, Arizona, on the Gila river, more particularly described as follows; At a point where Malpai butte on the east side of the river narrows up the valley of the Gila river, being the first butte north of Gila Bend Station; said location having been made by Lewis Woltley and Royal A. Johnson, October 27th, 1887, and recorded in book 1 of canals, page 123, county records of Maricopa county, Arizona Territory;

Also, that certain other water appropriation of twenty thousand miner's inches appropriated out of the waters of the Gila river by the Peoria Canal Company, June 20th, 1893; said water to be taken from said river at a point on the west side thereof, in said county of Maricopa, Territory of Arizona, about twenty-four (24) miles northerly from Gila Bend Station on the Southern Pacific railroad; said point being where the first butte on the east side of said river north of Gila Bend Station, and a mesa point on the west narrows up the channel of the river; the notice of said appropriation being recorded in volume 1 of canals, page 305, county records of Maricopa county, Arizona Territory;

Also, that certain other water location made by the Peoria Canal Company bearing date June 20th, 1893, appropriating all the unappropriated waters of the Gila river, in the Territory of Arizona, to be taken from the Gila river on the east side thereof, in the county of Maricopa, in said Territory, about twenty-four (24) miles northerly from Gila Bend Station on the Southern Pacific railroad; said point being where the first butte on the east side of said river and the mesa point on the west narrow up the channel of the river; the notice of said appropriation being recorded in volume 1 of canals, page 306 thereof, county records of Maricopa county, Arizona Territory;

Also, all other appropriations of water from said Gila river and water rights whatsoever owned by and used in connection with the canal hereinafter described, and the system of irrigation appurtenant and belonging thereto, in the county of Maricopa, and Territory of Arizona, intending thereby to include in the above, all the right, title and interest vested in, or belonging to, or claimed by the Gila Bend Reservoir and Irrigating Company, the Arizona Construction Company, the Peoria Canal Company, and any and all the parties to this suit.

Also, all canals, laterals and branches now constructed and in course of construction; also, the main line of said canal constructed for a distance of about forty (40) miles; said canal being about twenty-five feet in width on the bottom and sixty-five feet wide on the top and ten (10) feet deep, having a carrying capacity of seven hundred fifty (750) cubic feet of water per second, said canal commencing at a point on the Gila river where the dam hereinbefore referred to and described is constructed, being at a point on the Gila river at or near the center of the north half of section twenty-eight (28), township two (2) south, range five (5) west, in Maricopa county, Arizona Territory, running thence in a southeasterly direction on sections twenty-eight (28), twenty-seven (27), twenty-six (26), thirty-five (35), and thirty-six (36), in township two (2) south range five (5) west; also in the same direction on sections six (6), seven (7), eight (8), seventeen (17), sixteen (16), twenty-one (21), twenty-eight (28), and thirty-three (33), in township three (3), south, range four (4) west; also, in a southerly direction across sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34) in township four (4) south, range four (4) west; also in a southwesterly direction across sections three (3), ten (10), fifteen (15), sixteen (16), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty-two (32), and thirty-one (31), township five (5) south, range four (4), west; also across section thirty-six (36), in township five (5) south, range five (5) west; thence in a westerly direction across sections one (1), two (2), three (3), four (4), five (5), eight (8), six (6), seven (7), township six (6) south, range five (5) west; thence in a westerly direction across sections twelve (12), one (1), two (2), three (3), four (4), nine (9), eight (8), seventeen (17), eighteen (18), and nineteen (19) in township six (6) south, range six (6) west, all in Maricopa County, Arizona Territory.

Also, the main dam of said canal now constructed on the north half of section twenty-eight (28), in township two (2) south, range five (5) west, in Maricopa County, Arizona Territory; said dam being about twenty-one hundred (2100) feet long and about one hundred (100) feet wide on the bottom and twenty (20) feet wide on the top and about thirty-two and one-half ($32\frac{1}{2}$) feet in height, together with proper headgates, all of which is now constructed, built and together with about seventy (70) miles of laterals more or less;

Also, all the rights of way for the dam and head-gates for said canal and dam situate on section twenty-eight (28), in township two (2) south, range five (5) west aforesaid; and all rights of way along the entire length of the above canal as above described, and for fifty (50) feet on each side thereof, together with the reservoirs constructed and built along the line of said canal in connection and used and operated therewith;

Also, all rights of way for its branches and laterals for the entire length thereof, together with all the ditches, aqueducts, dams, and conduits, and also all water rights amounting to about one hundred twenty thousand (120,000) acres of land, each acre of which is entitled to share pro rata in not exceeding seven hundred fifty (750) cubic feet of flow of water per second to be taken from the Gila river, and which shall first flow in the canal before described, as now built or as said canal may be hereafter constructed by any party owning and operating the same, together with all field books, surveys, maps, instruments and all other property pertaining to and owned by and used in connection with the canal and branches thereof and its system of irrigation in Maricopa county; also all grants, rights, licenses, easements, privileges, franchises, leases, endowments and advantages and all revenues, rents, tolls or income arising or to arise from said real estate, water rights, canal branches, laterals and all extensions thereof, and all property and estate, real and personal of every kind and nature now owned, claimed or possessed in connection with said property, together with all and singular the tenements, hereditaments, rights, easements and appurtenances thereunto belonging or in anywise appertaining, or now held or enjoyed therewith, and the reversions, remainder and remainders, toll, incomes, revenues, rents, issues and profits thereof and also the rights, titles, interests, estates, property possessions, claim and demand, as well in law as in equity.

That plaintiff is credibly informed and believes that the defendants, the Peoria Canal Company, the Arizona Construction Company, James McMillan, Receiver, J. C. Wynd, H. C. Mann, J. B. Greenhut C. F. Ainsworth W. E. Thorne C. E. Crowley, Valley Canal and Land Company, and The Gila Water Company, make claims adverse to plaintiff's said estate and plaintiff alleges that said defendants have no claims either in law or equity to said property, wherefore plaintiff prays:

First.

That said defendants each and all of them may be required to appear in court and show what, if any, claim they have to said property.

Second.

That plaintiff be adjudged to be the owner in fee of said property.

Third.

That defendants be each and all of them barred and forever estopped from having or claiming any right or title to the premises adverse to the complainant.

Fourth.

And for such other and further relief as may seem to the Court to be just and equitable and for the costs of suit and attorneys' fees.

J. B. WOODWARD,
J. H. KIBBEY,
Attorneys for Plaintiff.

6 *Affidavit.*

COUNTY OF MARICOPA, *Territory of Arizona, ss:*

Lewis Woltley, President of the Gila Bend Reservoir and Irrigation Company, plaintiff in the above suit, on oath states, that he has read the complaint and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated on information and belief, and as to those matters, they are true in substance and in fact.

LEWIS WOLFLEY.

Subscribed and sworn to before me this 25th day of June, 1902.

J. B. WOODWARD,
[SEAL.] *Notary Public, Maricopa County.*

My commission expires Dec. 5, 1902.

Endorsed. Filed June 25, 1902. Elias F. Dunlevy, Clerk.

Answer.

(Title omitted.)

Now comes the above named defendants, Peoria Canal Company, The Arizona Construction Company, James McMillan, Receiver, J. C. Wynd, H. C. Mann, J. B. Greenhut, C. F. Ainsworth, W. E. Thorne, C. E. Crowley and Valley Canal and Land Company, and for himself and itself disclaims all right, title or interest adverse to the complainant herein or any other person, in the property mentioned and described in said plaintiff's complaint.

These defendants further answering,

Allege that they do not claim any right, title or interest whatever

in or to the property mentioned and described in the plaintiff's comp-aint herein, or to any part thereof.

Wherefore these defendants and each of them pray the judgment of this court that the said complaint of the plaintiff herein be dismissed as against each and every of them and that they have and recover of the said plaintiff their and each of their respective costs and disbursements incurred herein.

C. F. AINSWORTH,
Attorney for above named Defendants.

Affidavit.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

C. F. Ainsworth being first duly sworn on oath deposes and
7 says that he is one of the defendants in the above entitled action; that he has read the above and foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

C. F. AINSWORTH.

Subscribed and sworn to before me this 10th day of July, A. D., 1902.

THOS. D BENNETT,
[SEAL.] *Notary Public, Maricopa County.*

My commission expires Oct. 19, 1903.

Endorsed. Filed July 14, 1902.

(Title omitted.)
Answer of defendant, The Gila Water Company.
Filed July 14, 1902.

Amended Answer of Gila Water Company.

(Title omitted.)

Comes now the above named defendant, the Gila Water Company, a corporation, and for its amended answer to the complaint herein,

Admits that the plaintiff and this defendant are corporations as alleged in said complaint.

Admits the residence of the other defendants as alleged in said complaint.

Admits that it claims the right, title and interest of the property mentioned and described in the said complaint herein.

Denies that the plaintiff is the owner in fee simple of the property described in the complaint herein.

This defendant further answering the complaint here,

Alleges that it and its grantors have been in peaceable and adverse possession of all the property mentioned in the plaintiff's complaint herein, under title and color of title for more than three years preceding the date of the commencement of this action.

This defendant further answering the complaint herein,

Alleges that this defendant and its grantors have been in peaceable and adverse possession of all the property mentioned and described in the complaint herein, for more than five years prior to the commencement of this action, using and enjoying the same, paying taxes thereon, claiming under deeds duly recorded.

This defendant further answering the complaint herein and by way of cross-complaint,

8 Alleges that the plaintiff, the Gila Bend Reservoir and Irrigation Company, and this defendant, The Gila Water Company, are corporations duly incorporated under the laws of the Territory of Arizona, and heretofore doing business in the County of Maricopa and Territory of Arizona.

That this defendant, the Gila Water Company, is the owner in fee simple of all the property mentioned and described in the plaintiff's complaint herein, and that this defendant is now and it and its predecessors and grantors have been for over three years last passed in possession of all the property mentioned and described in said plaintiff's complaint herein.

That the said plaintiff, the Gila Bend Reservoir and Irrigation Company, makes claim adverse to this defendant's estate, and this defendant alleges that said plaintiff the said Gila Bend Reservoir and Irrigation Company, has not now and at the time of the commencement of this action had no right, title or interest in and to said property, or any part thereof, either in law or equity.

Wherefore this defendant prays the judgment of this court, that it be adjudged and decreed to be the owner in fee simple of all of the property mentioned and described in the complaint herein, and that said plaintiff be adjudged to have no right, title or interest in and to said property or any part thereof, and that the plaintiff be perpetually enjoined and forever barred and estopped from hereafter claiming any right, title or interest in or to the property mentioned and described in the complaint herein or any part thereof, and that this defendant have and recover of the plaintiff, its costs and disbursements incurred herein, and for such other and further relief as may be just and meet in the premises.

C. F. AINSWORTH,
Attorney for Defendant, Gila Water Company.

Affidavit.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

C. F. Ainsworth, being first duly sworn deposes and says that he is the President of the Gila Water Company, the defendant corpo-

ration mentioned and described in the above entitled action; that he has read the foregoing amended answer of the Gila Water Company, and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

C. F. AINSWORTH.

Sworn to before me this 13th day of September, 1902.

LLOYD B. CHRISTY,

[SEAL.] *Notary Public, Maricopa County.*

My commission expires May 31, 1903.
Endorsed. Filed September 15, 1902.

9 *Answer to Cross-complaint.*

(Title Omitted.)

I.

Comes now the above named plaintiff, the Gila Bend Reservoir and Irrigation Company, a corporation, and for its answer to defendant, the Gila Water Company's cross-complaint herein admits that plaintiff and this defendant are corporations as alleged in said cross-complaint and were incorporated and doing business as therein alleged.

II.

Denies that defendant, the Gila Water Company, is the owner in fee simple, or otherwise, of all or any part of the property mentioned and described in the cross-complaint and in the complaint herein, and denies that said defendant, or its predecessors and grantors, are now or have been for over three years last passed or at any time in the peaceable and adverse or other possession of all or any part of the property mentioned and described in said cross-complaint.

III.

And denies that said plaintiff, the said Gila Bend Reservoir and Irrigation Company, has not now, or at the time of the commencement of this action had no right, title or interest in or to said property or any part thereof either in law or equity or otherwise.

IV.

And plaintiff for further answer to the cross-complaint says that it is informed and believes and therefore alleges that the title, right

and claim upon which said defendant claims its right and title to said property is under and by virtue of a certain judgment and decree of this Court rendered and entered November 20th, 1894, and certain pretended receiver's deed or deeds made, executed and delivered under and by authority of said judgment and decree and proceedings thereunder, or a certain deed or deeds of some person or persons deraigning title under through and by virtue of said receiver's deed or deeds. And this plaintiff further alleges that said judgment and all proceedings thereunder and the making and delivery of said deed or deeds were and are absolutely void and the Court rendering said judgment had no jurisdiction to render said judgment or over any of the property mentioned in the complaint, in this:

1st. That the action in which said judgment and decree was rendered was in a proceeding in rem, and that in said action the said Court never attached, seized, levied upon or took possession of said property, or any part thereof, and never had or acquired any jurisdiction over said property or any part thereof.

2d. That in said action on the 21st day of July, 1894, this Court rendered and entered its judgment and same was and is the only judgment or decree in said action and that thereafter this plaintiff duly appealed from said judgment to the Supreme Court of the Territory of Arizona, and on the 12th day of November, 1894, duly perfected said appeal and that by reason of said appeal this Court then and there lost all jurisdiction in and over said action and thereafter and while said appeal was in full force and effect and said action still pending in said Supreme Court this Court on the 20th day of November, 1894, pretending to have jurisdiction of said action made and entered a pretended amendment to said judgment and decree and which was pretended to be in lieu of said original decree of July 21st, 1894, and which said pretended amendment of said judgment and decree was so rendered and entered by this Court without any jurisdiction of or over said action or said judgment and decree and was and is wholly void and that the only right or title that this defendant has or claims to said property or any part thereof is under and by virtue of said pretended amended and void judgment and decree.

And for another and further and separate answer to defendant's cross-bill herein this plaintiff alleges: That in December, 1893, a receiver was duly appointed by this Court in another action then pending in this Court and that said receiver then and there duly took possession of all of said property mentioned in the complaint herein and during all the times that this defendant claims to have obtained title to any of said property, the same and the whole thereof was in the custody of this Court and in the possession of said receiver and thereafter and prior to the commencement of this action this Court and said receiver ceased to have any custody or possession of said property or any part thereof and that any and all muniments

of title which this defendant may have received to said property or any part thereof by tax deeds or otherwise were and are wholly void.

J. B. WOODWARD,
Attorney for Plaintiff.

Affidavit.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

Lewis Wolfley, President of the Gila Bend Reservoir and Irrigation Company, plaintiff in the above suit, being first duly sworn, deposes and says that he is the president of the Gila Bend Reservoir and Irrigation Company, the plaintiff corporation mentioned and described in the above entitled action; that he has read the
11 foregoing answer to the cross-bill of the Gila Water Company and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to these matters he believes it to be true.

LEWIS WOLFLEY.

Sworn to before me this 15th day of October, 1902.

J. B. WOODWARD,
[SEAL.] *Notary Public, Maricopa County.*

My commission expires Dec. 5th, 1902.

Endorsed. Filed October 17, 1902.

Minute Entries.

And afterwards and upon to-wit the 13th day of October A. D., 1902, the same being one of the regular juridical days of the October Term A. D., 1902, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day it is ordered by the Court that this cause be set for trial October 23rd inst.

And afterwards and upon to-wit the 24th day of October A. D. 1902, the same being one of the regular juridical days of the October Term, A. D., 1902, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day before the trial of this cause, plaintiff asks and has leave to amend his answer to the cross-complaint of the Gila Water Co., by changing the date on page 3, from "1894" to "1893."

And afterwards and upon the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day comes the plaintiff hereto by J. B. Woodward, Esq., its attorney, and the defendant, Gila Water Co., by C. F. Ainsworth, Esq., its attorney, also comes.

The disclaimer of all other defendants having been heretofore duly filed herein, and

This cause now coming on to be tried before the Court without a jury, comes the evidence on the part of the plaintiff, at the
12 conclusion of which the defendant moves that this case be dismissed for lack of evidence, which is argued by counsel and the Court being now fully advised in the premises, doth grant said motion and dismiss plaintiff's complaint.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day comes the parties hereto by their attorneys, respectively.

And thereupon this cause coming on to be tried before the Court, upon the issues raised by the cross-complaint of the Gila Water Co. and the answer of the plaintiff thereto, comes the evidence upon the part of the cross-complainant to the hour of adjournment when the further trial is continued until tomorrow at 1.30 o'clock p. m.

And afterwards and upon to-wit the 25th day of October A. D. 1902, the same being one of the regular juridical days of the October Term A. D. 1902,of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day come again the parties hereto in person and by attorney, and thereupon this cause coming on for further trial upon the issues raised by the cross-comp-aint of the defendant and the answer of the plaintiff thereto, comes the further evidence at the conclusion of which and the argument of counsel, by consent is submitted to the Court for its further consideration.

And afterwards and upon to-wit the 8th day of November A. D. 1902, the same being one of the regular juridical days of the October Term A. D. 1902, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day comes the said plaintiff and asks and has leave to withdraw his motion for judgment heretofore made.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

13 (Title of Cause.)

At this day this cause having been heretofore submitted to the Court for its further consideration, upon the *the* issues raised by the counter-claim of the defendant The Gila Water Co., and the answer of the plaintiff thereto and the evidence taken, and the Court being now fully advised in the premise doth find for the said defendant, The Gila Water Co., on its counter-claim and that it is entitled to the relief prayed for therein.

Whereupon it is ordered that judgment be entered herein in accordance with such finding and that the same be recorded in the Judgment Book.

And afterwards and upon to-wit the 14th day of November A. D. 1902, the same being one of the regular juridical days of the October Term A. D. 1902, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day comes the said plaintiff by J. B. Woodward, Esq., its attorney, and the defendant, the Gila Water Co., by C. F. Ainsworth, its attorney, also comes.

And thereupon comes the further trial of this cause, plaintiff offers certain documentary evidence which is by the Court rejected and p-aintiff rests and by consent this cause is finally submitted to the Court for its further consideration.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day it appearing that plaintiff's motion for a new trial in this behalf was prematurely filed, plaintiff asks and obtains leave to

withdraw the same from the files and to file a new motion at the proper time.

And afterwards, to wit: On the 15th day of November A. D. 1902, the same being one of the regular judicial days of the October Term A. D. 1902, of said Court, the following order, *inter alia*, was had and entered of record in said Court, which said order is in words and figures as follows, to-wit:

(Title of Cause.)

At this day comes the parties hereto by their attorneys respectively, and thereupon this cause having been heretofore tried before the Court and by consent submitted to the Court for its further consideration on the cross-complaint of the Gila Water Co., and the
14 plaintiff's answer thereto, and the Court being now fully advised in the premises, doth find the issues herein joined for the Gila Water Co., on its cross-complaint, and

It is ordered that judgment be entered in accordance with said finding and that the same be recorded in the Judgment Book.

(Title omitted.)

Judgment.

This cause having been regularly tried by the Court without a jury, and the plaintiff being represented by its attorney, J. B. Woodward, and the defendants being represented by their attorney, C. F. Ainsworth, and the Court having heard all the testimony and proofs presented in said cause by the respective parties in said action, and the Court having made its findings of fact and conclusions of law herein, and the decision therein having been duly rendered by the Court, which findings, conclusions and decision are now on file in this case, wherein judgment was rendered in favor of the defendants herein against the plaintiff for their costs and disbursements and that plaintiff's said action be dismissed, and that the defendant, The Gila Water Company, have judgment in accordance with the prayer of its cross-complaint.

Now, therefore, it is by the Court hereby ordered, adjudged and decreed, that the plaintiff's said action be and the same is hereby dismissed.

It is further ordered, adjudged and decreed that the defendant, The Gila Water Company, is the owner in simple fee and in possession of all of the property mentioned and described in the complaint of the plaintiff herein and hereinafter set forth.

It is further ordered, adjudged and decreed that all adverse claims of the plaintiff, the Gila Bend Reservoir and Irrigation Company, and all of the other defendants in this action, and each of them, and of persons claiming or to claim said premises or any part thereof, through or under said plaintiff or either of said defendants above

named (except the defendant, The Gila Water Company) are hereby adjudged to be invalid and groundless, and that the title to all of said property be and the same is hereby adjudged and decreed to be quieted against all claims, demands and pretensions of the plaintiff, the Gila Bend Reservoir and Irrigation Company, and of the defendants above named (except the defendant, The Gila Water Company) or either or any of them or any persons claiming through them or either of them.

And it is further ordered, adjudged and decreed that the
15 said plaintiff, The Gila Bend Reservoir and Irrigation Company and the defendants above named (excepting the Gila Water Company) or either or any of them, and all persons claiming through them or either or any of them are hereby perpetually estopped and enjoined and forever barred from setting up any claim, right, title or interest in and to said property or any part thereof, adverse to the title of the Gila Water Company.

That the premises mentioned and described in said complaint and hereinbefore referred to, are described as follows, to-wit:

(See Complaint.)

And it is further ordered, adjudged and decreed that the defendants herein do have and recover from the plaintiff, the Gila Bend Reservoir and Irrigation Company, their costs and disbursements incurred herein, taxed and allowed at the sum of $16.85, and that they have execution therefor.

Dated at Phœnix, Arizona, November 15, 1902.

EDWARD KENT, *Judge.*

Filed in clerk's office Nov. 15th, 1902.

(Title omitted.)

Motion for New Trial.

Comes now the plaintiff and moves the Court for a new trial of this cause for the reasons:

I.

That the Court erred in dismissing plaintiff's suit, after plaintiff had established an equitable interest, through a certain agreement of June 16, 1893, and that the property was in the hands of a receiver of this Court, and that all parties to said agreement and said receiver had answered herein, disclaiming any right, title or interest in or to said property.

II.

The evidence does not sustain the judgment rendered on the cross-complaint.

III.

The Court erred at the trial under the cross-complaint in admitting evidence offered by the defendants.

IV.

The Court erred at the trial under the cross-complaint in excluding evidence by the plaintiff.

16 V.

That the judgment is contrary to law.

J. B. WOODWARD,
Attorney for Plaintiff.

(Title omitted.)

Bill of Exceptions.

(Sections 1459, 1460 and 1465, R. S. of A., 1901.)

Part I.—"Exceptions." Pages 1 to 6 inclusive.
Part II.—"Circumstances and Evidence." Pages 7 to 29.

Part I.—Exceptions.

Be it remembered, that the above entitled cause coming on to be heard before Hon. Edward Kent, Judge of said Court—

1. Plaintiff excepted to the order of the Court dismissing its complaint, for the reason that the plaintiff claimed it had introduced evidence tending to prove an equitable title in and to the property in controversy, and that all the parties, connected with said title, had answered therein, disclaiming any and all right, title or interest in or to said property, except the Gila Water Company, which claimed the legal title, as is fully explained in Part II, paragraphs 1, 2, 3 and 4.

2. Plaintiff excepted to the ruling of the Court allowing defendant, The Gila Water Company, to introduce in support of its cross-complaint, the summons, complaint, exhibits and answers, in suit No. 1996 of this Court, filed May 23, 1894, because it claimed said complaint on its face showed that it asked the seizure of certain therein described property, and therein shown to be, at that time, in the hands of a receiver in a prior suit, and also showed that said receiver was not made a party to said suit No. 1996, and said complaint, summons and answers tended to show on their face fraudulent collusion between plaintiff and defendants, as is fully explained in Part II, paragraphs 5 and 15.

3. Plaintiff excepting to the ruling of the Court allowing The

Gila Water Company to introduce in support of its cross-complaint, the application for and the appointment of James McMillan, on December 6th, 1895, as receiver in suit No. 1728 in this Court, because it claimed said appointment on its face showed it to be only a limited receivership, and because he was never appointed receiver in suit No. 1986, and as being immaterial and irrelevant in this suit, as is fully explained in Part II, paragraphs 4, 5, 8, 10, 12 and 17.

17 4. Plaintiff excepted to the ruling of the Court allowing defendant, The Gila Water Company, to introduce the judgment in said suit No. 1986 of this Court, of July 21st, 1894, and the judgment of November 20th, 1895, being "in lieu" of that of July 21st, 1894, because it claimed said judgments show on their face, that they order the sale of the property shown by the complaint therein, to be in the hands of James McMillan, a "limited" receiver under suit No. 1728, and who was never made a party to said suit No. 1986, nor were said suits Nos. 1728 and 1986 shown to have been consolidated, as is fully explained in Part II, paragraph 4, 5, 8, 12 and 17, and because it claimed the complaint shows on its face, that it prays for the sale of the therein described property, and that no judgment *in personam* was asked against the defendants, or any of them, as is fully explained in Part II, paragraph 5.

And because it claimed the judgments in said suit No. 1986 were for the sale of the property described in said complaint, and no judgment *in personam* was given against the defendants, or any of them, as is fully explained in Part II, paragraphs 6 and 7.

5. Plaintiff further excepts — the ruling of the Court in refusing to allow the plaintiff to show that no order was made to any officer directing the seizure, or for taking said property into the possession of, or under the control, of the Court, prior to the hearing in said suit No. 1986, and as fully appears in Part II, paragraphs 13 and 17.

6. In refusing to allow plaintiff to show that there is no report of any officer, showing or tending to show, that said property was ever taken into possession, or under the control, of the Court, prior to the hearing in said suit No. 1986, as fully appears in Part II, paragraphs 13 and 17; and

7. In refusing to allow plaintiff to introduce evidence to show that it could not be held to have consented to the receiver in said suit No. 1728, being considered as receiver in said suit No. 1986, or to any other acts done in said suit, as is fully explained in Part II, paragraphs 13, 14, 22 and 23.

8. Plaintiffs excepted to the ruling of the Court allowing defendant, The Gila Water Company, to introduce the judgment of November 20th, 1894, of suit No. 1995, and in refusing to allow plaintiff to show that an appeal had been fully perfected from the final judgment in said suit, of July 21st, 1894, and prior to the rendering of said judgment of November 20th, 1894, as is fully explained in Part II, paragraph 18.

9. Plaintiff excepted to the ruling of the Court allowing defend-

ant, The Gila Water Company, to introduce the report of a
18 sale made by James McMillan to C. E. Crowley of January 5th, 1895, and the order confirming said sale of January 10th, 1895, and purporting to have been made in and under a consolidation of said suits Nos. 1728 and 1996, of this Court, for the reason that it claimed that no such consolidation was shown, and because the evidence before the Court showed that said suit had been separately tried, and separately appealed, and that judgments had been rendered in said suit No. 1996, appeals perfected, and that the term of the Court ended, at which said judgments were made, as is fully explained in Part II, paragraphs 8, 9, 10, 11, 12, 17 and 19.

10. Plaintiff excepted to the ruling of the Court allowing defendant, the Gila Water Company, to introduce the deeds to C. E. Crowley, of January 10th, 1895, and to J. B. Greenhut, of November 26th, 1898, purporting on their face to be from James McMillan, a receiver duly appointed in two equity suits Nos. 1728 and 1996 of this Court, and under orders and decrees issued in said suit No. 1996, for the reason that it claimed that the evidence shows that said James McMillan was appointed, as a limited receiver, in said suit No. 1728 and because there is no evidence showing or tending to show, that said James McMillan was ever appointed receiver in, or that he was ever made a party to said suit No. 1996, as is fully explained in Part II, paragraphs 4, 8, 10, 12 and 17.

11. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to show that it filed a supplemental complaint in said suit No. 1728, after first serving the same on the attorneys of record of defendants therein, and in refusing to allow plaintiff to show that it attempted, under said supplemental complaint to have James McMillan, receiver in said suit, restrained from advertising or selling plaintiff's property unless so ordered in said suit No. 1728, and in refusing to allow plaintiff to show that it attempted in said suit No. 1728 to have said James McMillan restrained from deeding or giving possession of plaintiff's property to said J. B. Greenhut, or any other person, unless so ordered in said suit No. 1728 as is fully shown in Part II, paragraphs 21, 22 and 23.

12. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to show in support of title that it applied to the Supreme Court of the Territory, for a rehearing of the "Findings of Facts" by said Court in said suit No. 1728, and that said rehearing was denied in April, 1902, as is fully shown in Part II, paragraph 24.

13. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to show that James McMillan, receiver in said suit No. 1728, was never ordered or authorized in said suit No. 1728 to sell or otherwise dispose of plaintiff property in his hands as such receiver, as is fully shown in Part II, paragraphs 13 and 25.

19 14. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to introduce in evidence its motion of "bias and prejudice" and that it offered no defense in said suit No. 1996, as is fully explained in Part II, paragraphs 13 and 14.

15. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiffs to introduce appellant's briefs in said suit No. 1996, being suit No. 455 in the Supreme Court, for the purpose of showing what questions of jurisdiction had been presented in that Court, as is fully explained in Part II, paragraphs 13 and 16.

16. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to introduce the records of suit No. 1986 to show that the Court had acquired no jurisdiction over the *res* prior to the hearing and determining said suit, as is fully explained in Part II, paragraphs 13 and 17.

17. Plaintiff excepted to the ruling of the Court in refusing to allow plaintiff to show that the plaintiffs in suit No. 1986 of this Court were all stockholders in the Arizona Construction Company and Peoria Canal Company, and that the stockholders of said companies were one and the same, as is fuly explained in Part II, paragraphs 15 and 16.

18. Plaintiff excepted to the ruling of the Court in giving judgment to defendant, The Gila Water Company, and in not giving judgment to plaintiff as prayed for in its complaint herein for the reasons set forth in the above exceptions and as is fully shown by the Evidence and Circumstances in Part II, paragraphs 1 to 26, inclusive.

19. Plaintiffs excepted to the ruling of the Court denying its motion for a new trial, for the reasons set forth in the above exceptions and as is fully explained by the Circumstances and Evidence contained in Part II, paragraphs 1 to 26, inclusive.

Part II.—Circumstances and Evidence.

(Section- 1459 and 1460, R. S. of A. 1901.)

Paragraph 1. Plaintiff introduced by the records of the recorder's office of Maricopa county, Arizona, the United States receiver's certificate to Lewis Woltley, of the S. E. ¼ of the N. E. ¼ and the S. E. ¼ of Sec. 28 and N. ½ of the S. E. ¼ of Sec. 27, T. 2 S., R. 5 W., G. and S. R. Base and Meridian; also sheriff's deed to Lewis Woltley of the water location made by G. W. Webb, April 28, 1881; also the water locations made by Wells H. Bates, DeWitt C. Bates, R. C. Powers and Royal A. Johnson, on September 8, 1887; also the water locations made by R. C. Powers, April 29, 1889, as described in the complaint; also the certificate of location of the dam-site and canal head made by Lewis Woltley and Royal A. Johnson, October
20 27, 1887, as described in the complaint; also the sheriff's deed to Lewis Woltley of the dam-site and canal head located October 27, 1887, by Lewis Woltley and Royal A. Johnson; also the deed to Lewis Woltley to plaintiff herein of all the above named property, as above described, and a deed from the plaintiff to the Peoria Canal Company dated June 16th, 1893, for the above described property.

Paragraph 2. Plaintiff introduced an agreement of June 16, 1893, between plaintiff, The Arizona Construction Company and Peoria Canal Company, which states that it is a settlement of all differences and controversies, and an adjustment of all contracts existing between the Arizona Consruction Company and plaintiff, and

Therein it states that plaintiff's injunction then pending shall be dissolved and that the sales thereby enjoined shall proceed, and

That the title to plaintiff's property shall be made perfect in the Peoria Canal Company by said company bidding the property in at said sale, and

That the Arizona Construction Company shall pay off and discharge all sub-contractors' liens, and

That the Peoria Canal Company shall make and deliver to the Arizona Construction Company its promissory notes, payable on or before two years from the date thereof, with interest, for all moneys that the Arizona Construction Company had invested, or was liable for, with interest; the amount to be determined by a verified statement of the treasurer of the Arizona Construction Company and as security to said notes, all the capital stock of the Peoria Canal Company was to be placed in escrow; said Peoria Canal Company was to issue $750,000, first mortgage, and $350,000, second mortgage bonds, interest payable semi-annually and redeemable at any interest paying period, said bonds to be placed on the market and all the parties to aid in the sale thereof.

The proceeds of said bonds to go to paying off said two year notes, and if said notes are paid off within two years and sixty days from the proceeds of said bonds, or by plaintiff, that when so paid off the said capital stock shall be delivered to plaintiff.

The maintenance and repairs to be paid from the proceeds of the bonds, or from the sale of water-rights.

One of the signers being John H. Francis, as director of the Arizona Construction Company, and President of the Peoria Canal Company.

Paragraph 3. Plaintiff introduced a *lis pendens* filed September 23, 1893, which states that suit is pending in this Court, Plaintiff *vs.* Peoria Canal Company and Arizona Construction Company, the object of which is to have plaintiff declared the equitable owner of the property herein, and

21 That the Peoria Canal Company be restrained from issuing any notes to any date, prior to having received a full verified statement and securing said notes, as provided for in the agreement of June 16th, 1893, and

That the Arizona Construction Company be required to forthwith make and deliver the verified statement in full, and

That the Peoria Canal Company be required upon the receipt of said verified statement, to issue its notes to the Arizona Construction Company and deposit its capital stock in escrow, as required by said agreement, and

That the Peoria Canal Company be restrained from doing any act

or thing, except as provided for in said agreement, and as set forth in the complaint in said suit, and for such other and further relief as may be just and equitable, and describes the above described property as the object of said suit.

Paragraph 4. Plaintiff introduced the written application of the Peoria Canal Company for the appointment of a receiver, filed December 4, 1893, in the suit of Plaintiff *vs.* Peoria Canal Company, *et al.*, being suit No. 1728 in this Court, also the order made in said suit and dated December 6, 1893, appointing James McMillan receiver,

Said application states that said Peoria Canal Company is in possession and control of the property described in the complaint, under the terms and by virtue of the contract and agreement of June 16, 1893, designated as the tri-partite agreement, and that by reason of damage by a flood, litigation, plaintiff's insolvency and its inability to raise money, states that a receiver is necessary to repair, operate and control the property.

Said order appointing James McMillan receiver, states that he is appointed receiver of the property described, with the power to bring and defend suits, to receive and collect rents, and especially to repair, rebuild and to save the property from all loss by reason of liens and judgments, by the Court, A. C. Baker, Judge.

Paragraph 5. Defendant in support of its cross-complaint introduced all the evidence offered by plaintiff in derainment of its title.

Defendant introduced the complaint and answer in the suit of Plaintiff *vs.* Peoria Canal Company and Arizona Construction Company, filed September 23, 1893, being suit No. 1728 in this Court, which states that plaintiff is the equitable owner of the property therein described, and that the verified statement required by the agreement of June 16, 1893, had not been made and that the two year notes had not issued, nor the capital stock of the Peoria Canal Company placed in escrow, as required by said agreement and that plaintiff prayed to be declared the equitable owner of the property therein, and that the Peoria Canal Company be restrained
22 from doing any act or thing, other than as provided for in said agreement and for such other and further relief as may be just and reasonable.

Said answer, signed November 24, 1893, alleges that the Peoria Canal Company is the legal, equitable and owner in fee of said property and that the verified statement of $721,679.03 was made in full October 5, 1893, and that its capital stock had not been placed in escrow, as contemplated in the agreement of June 16, 1893, and that as soon as debts of the Arizona Construction Company to the subcontractors and others are paid, it will issue the notes due under said agreement and that said notes will bear date June 19, 1893, and that the dam had washed out, and that steps were taken to place a loan of $850,000, and prays the Court to be allowed to issue certificates, on which to borrow money for the purpose of repairing the dam, and

that the Court will quiet title in the Peoria Canal Company and restrain plaintiff from proceeding to prevent the sale of bonds.

Defendant introduced the application for, and the appointment of James McMillan, receiver in said suit No. 1728.

Defendant introduced the complaint and exhibits, summons and answers in suit No. 1996 in this Court, being W. H. Linn, Chas. B. King (executor of the will of Chas. P. King, deceased), Wm. M. Benton, J. W. Gift, Wm. McLean, Jacob Wachenheimer, Jacob Schawabacher, Henry Schwabacher and Thomas McIlvaine, *vs.* The Gila Bend Reservoir and Irrigation Company (a corporation), The Arizona Construction Company (a corporation), The Peoria Canal Company (a corporation), Jas. B. Greenhut, John H. Francis, C. E. Crowley, Redmond Toohey, John C. Ward, and J. M. Burnett.

Said complaint states that said plaintiffs sue for themselves and all other creditors of the Arizona Construction Company and Peoria Canal Company; that said plaintiffs and defendants, Joseph B. Greenhut, John H. Francis and John C. Wynd, are residents of the State of Illinois and that C. E. Crowley is a resident of Los Angeles, California, and

That the Arizona Construction Company is justly indebted to these plaintiffs for money advanced at the request of, and for the use of said company, which sums of money were used by said company in and about the work of constructing a certain dam and canal for said Gila Bend Reservoir and Irrigation Company, all of which sums are due and unpaid; and allege that the agreement of June 16, 1893, was made without their consent and was in fraud of their rights, and that all the parties of said contract were insolvent, and

That this court had on or about December 6, 1893, ap-
23 pointed a receiver and that on or about December 7, 1893, said receiver took possession of the property hereinbefore described and who still holds possession of the same.

Wherefore said plaintiffs pray that the Court appoint a receiver or enlarge the powers of the present receiver and take possession of said property and sell the same to pay the debts proven to the Court. John Stevens and Millay and Bennett, attorneys for plaintiffs. Suit filed May 23d, 1894, and summons issued of that date.

The return of said summons states that it was served on the Gila Bend Reservoir and Irrigation Company and that none of the other defendants were found within the county, dated May 25, 1894.

The answer of the Arizona Construction Company is dated May 24, 1894, and states that the agreement of June 16, 1893, had been made in fraud of the rights of said plaintiffs and that said agreement was impracticable and had not been carried out, and prays the Court to appoint a receiver, or to enlarge the powers of the present receiver and take possession of and sell said property.

The answer of the Peoria Canal Company, dated May 26, 1894, admits that the agreement of June 16, 1893, was in fraud of the rights of said plaintiffs and was impracticable and had not been carried out and asks to be relieved of said trust, and asks that the prop-

erty be subjected to the payment of the debts according to their priority.

The answer of defendants Greenhut and Francis, dated May 29, 1894, alleges that the conveyances to the Peoria Canal Company were made without their knowledge and in fraud of their rights, and asks the Court to appoint a receiver and sell the property for the payment of the debts, as may in equity appear.

The answer of C. E. Crowley, filed May 29, 1894, alleges that the agreement of June 16, 1893, was made without his knowledge or consent and asks that the receiver be directed to sell the property and that his debts be paid.

The answer of R. Toohey, filed May 29, 1894, alleges that the agreement of June 16, 1893, was without his knowledge or consent and asks that the receiver be directed to sell the property, and that his debts be paid.

The answer of John C. Wynd, dated May 26, 1894, states that he is a stranger to all parties to the suit and that by reason of a sheriff's deed he is the owner in fee of all the property and prays the Court to confirm said title.

The answer of J. M. Burnett, filed July 14, 1894, is a demurrer and general denial. Millay & Bennett, attorneys for J. M. Burnett.

The answer of the Gila Bend Reservoir and Irrigation Com-
24 pany is a demurrer that the complaint does not show facts sufficient for cause of action, that it is multifarious and embraces inconsistent claims not properly joined, and a general denial filed June 1, 1894.

Paragraph 6. Defendant introduced the decree of July 21, 1894, in said suit No. 1996.

In which is stated that the Peoria Canal Company took the property, as trustee under the agreement of June 16th, 1893, and that said agreement failed and was incapable of execution and that plaintiffs were creditors to the Arizona Construction Company, prior to the execution of said agreement, and had never assented thereto; that their claims were due and unpaid, and

"It is further ordered, adjudged and decreed by the Court that James McMillan, the receiver heretofore appointed by this Court, and now in possession of said premises under the orders of this Court' proceed to advertise and sell said property and distribute the proceeds as directed in the decree.

Paragraph 7. Defendant introduced the decree of November 20, 1894, in said suit No. 1996.

Which states that it is to read and be in lieu of the decree of July 21, 1894, and states that the Peoria Canal Company took the property as trustee under the agreement of June 16, 1893, and that said agreement failed and was incapable of execution and that plaintiffs herein, and all others for whom they sue in this cause and the defendants C. E. Crowley, Redmond Toohey and John C. Wynd were creditors of the Arizona Construction Company prior to the

execution of said agreement and had never assented thereto and that their claims were due and unpaid.

"Also to Gondolfo and Sanguenetti the further sum of four thousand eight hundred and seventy-seven dollars and eleven cents ($4,877.11), with interest at the rate of seven per cent. since August 28th, 1894, said claim having been filed and allowed against the Arizona Construction Company since the former decree."

"Also pay to Gondolfo and Sanguenetti the sum of $1510.89 with interest thereon at the rate of seven per cent. since August 28, 1894; also pay to E. G. Caruthers the sum of $705.89 with interest thereon at the rate of seven per cent. since October 18, 1893; also pay to Wing Sing the sum of $1509.07 with interest thereon at the rate of seven per cent since October 18, 1893, said claims having been filed and allowed against the Peoria Canal Company since the date of the original decree herein."

"It is further ordered, adjudged and decreed by the Court that on or before the day fixed for the sale hereunder the Gila Bend Reservoir and Irrigation Company pay to Lewis Wolfley the sum of $4840.00 with interest thereon from date thereof at the rate of seven per cent. per annum until paid; also to J. C. Perry the sum
25 of $4,500.00 with interest thereon from date thereof at the rate of seven per cent. per annum until paid; also to E. J. Horton the sum of $16,100.00 with interest thereon from date hereof at the rate of seven per cent. per annum until paid.

Said claims having been filed and allowed herein since the date of the former decree."

"Also pay to Gondolfo and Sanguenetti the sum of $1510.98 with interest thereon at the rate of seven per cent. since August 28, 1894; also pay to E. G. Caruthers the sum of $705.89 with interest thereon at the rate of seven per cent. since October 18, 1893; also pay to Wing Sing the sum of $1509.07 with interest thereon at the rate of seven per cent. since October 18, 1893, said claim having been filed and allowed against the Peoria Canal Company since the date of the original decree herein."

It is further ordered, adjudged and decreed by the Court that James McMillan, the receiver heretofore appointed by this Court, and now in possession of said premises under the orders of this Court, proceed to advertise and sell said property and distribute the proceeds as directed in the decree.

Paragraph 8. Defendant introduced the assignment of errors in suit No. 1996 from I to LXV, inclusive.

Assignments I, II and III allege that the Court erred in refusing to grant a change of venue, and in denying the petition for change of venue, and in retaining jurisdiction after the filing of the petition for change of venue, and the affidavits in support thereof.

Assignments LIII alleges that the Court erred in permitting the sheriff's deed to J. C. Wynd to be offered, over the objection, as no title was claimed under said deed to any portion of the property.

Defendant also offered the motion for new trial, made November

20, 1894, in suit No. 1996, the order denying said new trial, the notice of appeal, and the additional assignment of Errors, being Nos. LXVI to LXX, inclusive, and

That the May term, 1894, of this Court adjourned *sine die,* December 5, 1894.

Assignment of errors LXVII alleges error, in that, no receiver had been appointed in said suit No. 1996, nor had the powers of the receiver of suit No. 1728 ever been enlarged, to give the Court jurisdiction, to so order the receiver of said suit No. 1728.

Paragraph 9. Defendant introduced a report, dated January 3, 1895, and bearing a double heading, viz., title and numbers of suits 1728 and 1996 of this Court, purporting to be a sale of the property herein by James McMillan, receiver under orders and decree in suit No. 1996, as amended November 20, 1894, as stated in the advertisement thereto attached and made a part of said report to
26 one C. E. Crowley and wherein it is stated that over $100,000 of receiver's certificates were still outstanding.

Defendant introduced an order of this Court, dated January 10, 1895, bearing a double heading, viz., title and Nos. of suits 1728 and 1996, in this Court, confirming said sale of January 3, 1895, to said C. E. Crowley, conditioned, that possession of said property should not be given to said Crowley until all the outstanding receiver's certificates were paid off.

Defendant introduced a deed of all the property to C. E. Crowley, purporting to be from a receiver duly appointed in two equity suits and named therein by title and number, being suits Nos. 1728 and 1996 in this Court, and that the sale was made under orders and decrees made and issued in said suit No. 1996, and signed James McMillan, receiver.

Defendant introduced a deed from said C. E. Crowley conveying said property to the Valley Canal and Land Company and a deed from said Valley Canal and Land Company conveying said property to defendant, The Gila Water Company.

Paragraph 10. Defendant introduced the decree of February 18, 1899, in suit No. 1728, Webster Street, Presiding Judge, wherein it was decreed that defendants go hence without day and to have and recover their costs and charges of plaintiff, also that plaintiff therein perfected an appeal on April 11, 1899, to the Supreme Court of the Territory.

That the Supreme Court of the Territory affirmed said decree of February 18, 1899, on January 26, 1901, and on March 19, 1902, handed down its "finding of facts" in the nature of a special verdict.

I.

That defendant, the Peoria Canal Company, held the property in controversy as trustee, subject to the terms and conditions contained in an agreement dated June 16th, 1893, between the parties hereto. Said agreement being exhibit "G" of plaintiff's complaint herein.

That the sale made by James McMillan, as receiver herein to one C. E. Crowley on January 3rd, 1895, and to J. B. Greenhut, November 23rd, 1898, were made pursuant to and in conformity with the judgment, orders and decrees in suit Number 1996; and that the tax sale to H. C. Mann, C. F. Ainsworth and W. E. Thorne of said property was made while the property in question was in possession of the receiver herein.

II.

27 States that suit No. 1728 in the District Court of Maricopa county, was commenced September 23rd, 1893, (the purpose hereinbefore set forth, under the head of *Lis Pendens* and said complaint.)

III.

Defendants in answer prayed for specific relief, and to be allowed to issue and sell certificates, which should be a first lien and with which to repair the property.

That the cause was tried November 24, 25, 27, 1893, and evidence closed.

That defendants made application for the appointment of a receiver (said application is given in another paragraph,) also that James McMillan was appointed receiver (said appointment is elsewhere given.)

That on January 4th and 5th, 1894, the cause was argued, submitted and taken under advisement.

IV.

That on May 23d, 1894, certain creditors began suit No. 1996 in District Court, of Maricopa county (the complaint, summons and answers in which are elsewhere given.)

That said action was tried and judgment rendered November 20th, 1894. (Substance of said judgment is elsewhere given.)

V.

That said judgment was appealed to the Territorial and U. S. Supreme Courts and affirmed by said Courts and said receiver, James McMillan, proceeded to advertise and sell the property (as elsewhere stated), and

That October 13th, 1898, plaintiffs, without leave of Court deposited in the clerk's office of said District Court, and had marked as filed a certain paper denominated by it a supplemental complaint in this action, which as stated had been closed and submitted five years before.

On motion of plaintiff based on this supplemental complaint, and without service thereof on the receiver or defendants the District Court made an order directing the receiver to show cause why he should not be restrained from selling said property.

The receiver appeared and showed the Court the decree in said suit No. 1996, and no evidence being offered the motion to restrain was denied, and on November 23d, 1898, said receiver sold said property to J. B. Greenhut. (As stated elsewhere.)

The plaintiff then moved said District Court to restrain the receiver from conveying said property so sold.

This motion not being based on any papers, affidavits or other documents or facts, the receiver justified his proceedings under said decree in suit No. 1996, as before, and the Court denied the
28 motion, no testimony being offered, except the records in this suit and in said suit No. 1996.

February 4th, 1899, said cause was set for final disposition and on February 18th, 1899, was heard and tried by said District Court, no testimony being offered or taken other than that taken and filed November, 1893, and judgment was rendered for defendants and that plaintiff take nothing for its action.

VI.

Plaintiff being the owner of a dam-site and small canal contracted with the Arizona Construction Company to construct a dam and canal and on this account became indebted to said company in the amount of $721,000.

This indeptedness was secured by deeds of trust on said property, and plaintiff obtained an injunction restraining the trustee's sale, and thereafter plaintiff and said Construction Company made a settlement of all their differences and adjusted all their contracts by the agreement of June 16th, 1893.

No part of plaintiff's indebtedness has been paid, and plaintiff has been insolvent since June 16th, 1893.

VII.

The Peoria Canal Company was organized for the purpose of buying said property at said trustee's sale, but after the execution of said June 16th, 1893, agreement took title and possession thereunder and held the same under the terms of said agreement.

Said Peoria Canal Company issued its bonds and endeavored to sell the same as provided in said June 16th agreement.

The statement of indebtedness required by said June 16th agreement was completed and delivered October 5th, 1893.

The Peoria Canal Company in good faith endeavored to carry out said June 16th agreement.

VIII.

After the June 16th agreement a large portion of the dam was destroyed by a flood and the expense of repairing the same was about $100,000 over the amount estimated to be spent by said agreement.

The receivership and all the rights and interests of the parties to

this suit were rendered necessary to preserve the same, and no want of good faith is anywhere charged in the appointment or acts of said receiver or in the acts or doings of said defendants.

IX.

The plaintiff has not been injured or damaged by any acts of receiver James McMillan or defendants.

29 All acts and doings of receiver James McMillan have been under orders and judgments of the Court appointing him as such receiver and that said receiver was in possession and full control of all the property involved in this action when ordered by the Court in said suit No. 1996 to sell the same, and all the parties hereto were parties to said suit No. 1996, in which all the rights of plaintiff in said property were at issue and as fully determined as they could have been in this action.

X.

Plaintiff's so called supplemental complaint herein was not filed by leave of Court nor was the same served on either of the defendants hereto.

Paragraph 11. Defendant introduced the report made in suit No. 1996, by James McMillan, receiver, of the sale of the property described herein, to J. B. Greenhut of November 23, 1898, wherein it is stated that C. E. Crowley had failed to pay off the outstanding receiver's certificates, and that the receiver had never given possession to said Crowley, and that $18,800 was the best bid and that the sale was made under the amended decree of November 20, 1894, and Jan. 10, 1895, in suit No. 1996, as shown by the advertisement attached and made a part of said report; also

Defendants introduced the order of this Court in suit No. 1996 confirming said sale of November 23, 1898, to said Greenhut, also the deed of the property described herein from James McMillan, receiver, to J. B. Greenhut, said deed on its face purporting to be by a receiver duly appointed in two equity suits, therein designated by title and number and being suits Nos. 1728 and 1996 in this Court and that the sale was made under orders and decrees in suit No. 1996.

Defendants introduced a deed from said J. B. Greenhut for the property described herein to said defendant, The Gila Water Company.

W. C. Foster testified for defendant, that said J. B. Greenhut had taken possession of said property upon receiving the receiver's deed and had placed a keeper in charge thereof, and that the defendant, The Gila Water Company, took possession of the property on receiving the deed from Greenhut and were at the time of the commencement of this action in possession of the property.

Paragraph 12. Plaintiff in defense under the cross-complaint introduced the order of the Court dated May 29, 1894, in suit No. 1996 wherein it is stated that the Court in said suit attempted to enlarge

the powers of James McMillan, as receiver in suit No. 1728, so that

"James McMillan, as such receiver is hereby invested with
30 full possession and such title as to assure the purchasers of such water-rights a complete and perfect title to the same."

Plaintiff also introduced plaintiff's motion for new trial, and the order denying the same, under the judgment of July 21, 1894, in said suit No. 1996 and that plaintiff had in open court given notice of appeal.

Paragraph 13. At this point the Court adjourned the trial saying, "he would take under consideration the right of plaintiff to collaterally attack the proceedings and judgments in said suit No. 1996," and on November 8, 1902, gave judgment in favor — defendant, The Gila Water Company, and

On November 14, 1902, re-opened the case to allow plaintiff to offer its evidence and to make a record thereof, whereupon plaintiff offered the following evidence, which was objected to in detail by defendant, The Gila Water Company, and said objections were sustained by the Court, to-wit:

Paragraph 14. Plaintiff offered affidavit of "bias and prejudice" filed in suit No. 1996, also folios 877, 878, page 213, suit No. 455 in Territorial Supreme Court.

Paragraph 15. Plaintiff offered record of suit No. 1996, being suit No. 455 in the Territorial Supreme Court pages 198, 199,

Which shows that the plaintiffs in suit were all stockholders and officers of the Arizona Construction Company, and that the stockholders of the Arizona Construction Company are the stockholders of the Peoria Canal Company, they are one and the same, also

Paragraph 16. Plaintiff offered the briefs filed by appellant in said suit No. 1996, being suit No. 455 in the Territorial Supreme Court,

Which shows that the question of jurisdiction over the subject matter of said suit, or that the loss of jurisdiction by reason of a perfected appeal or fraudulent collusion was not presented in said briefs to said Supreme Court, also

Paragraph 17. Plaintiff *ordered* the records of suit No. 1996, being suit No. 455 in the Territorial Supreme Court,

Which plaintiff claims shows that no order was made in suit No. 1996 by which the Court could or did acquire control of the property, prior to the hearing and determining of said action, and to show that no officer ever made a return to said Court in said suit No. 1996 showing that the property, or any property, had been taken into the control, or possession of the Court prior to the hearing and determining of said action, and

Which plaintiff claims shows that James McMillan was never appointed receiver therein, and

Which plaintiff claims shows that the Court never acquired jurisdiction over the *res* in said suit No. 1996.

31 Paragraph 18. Plaintiff offered the record of said suit No. 1996, pages 244–5,

Which shows that plaintiff perfected said appeal, as provided for in Sections 859–861, R. S. of A., 1887, on November 12, 1894, by bond duly approved and filed in this Court.

Paragraph 19. Plaintiff offered the records of said suit No. 1996, page 267,

Which shows that the transcript on appeal was delivered by the clerk of this Court on January 9, 1895,

Paragraph 20. Plaintiff offered the records of suits Nos. 1728, being suit No. 696 in the Territorial Supreme Court and said 1996,

Which shows that the decree and order of January 10, 1895, and the deeds given to C. E. Crowley and J. B. Greenhut by James McMillan, receiver, did not form any portion of said suits as appealed and has never been affirmed by any appellate court.

Paragraph 21. In deraignment of its title plaintiff—

Offered the records of said suit No. 1728, pages 31 to 45,

Which shows that plaintiff filed a supplemental complaint therein after first serving a copy thereof on the attorneys of record in said suit, as the endorsements on the original complaint on file in said suit No. 1728 will show,

And by said supplemental complaint attempted to maintain its right, title and interest in and to the property herein.

Paragraph 22. Plaintiff offered page 45 of record of said suit No. 1728,

Which shows that under said complaint plaintiff endeavored November 2, 1898, to have James McMillan, receiver therein, restrained from selling plaintiff property without orders in said suit No. 1728.

Paragraph 23. Plaintiff offered records of said suit No. 1728, page 48,

Which shows that plaintiff on November 23, 1898, endeavored to have James McMillan, receiver, restrained from deeding or giving possession of plaintiff's property to J. B. Greenhut, or any other person or persons until so ordered in that suit.

Paragraph 24. Plaintiff offered plaintiff's motion in the Territorial Supreme Court in said suit No. 1728,

Which shows that plaintiff moved for a rehearing of the "finding of facts" by said Court and said hearing was denied April, 1902.

Paragraph 24. Plaintiff offered records of said suit No. 1728, being suit No. 696 in the Territorial Supreme Court,

Which plaintiff claims shows that James McMillan re-
32 ceiver therein, was never ordered or authorized by any orders therein, to sell or otherwise dispose of the property in his hands, as such receiver.

Paragraph 26. The Court gave judgment for defendant, the Gila Water Company, November 15, 1902, as prayed for in its cross-complaint, and

Plaintiff moved for a new trial as provided for by Section 1472 to 1476, R. S. of A., 1901, as follows:

I.

That the Court erred in dismissing plaintiff's suit, after plaintiff had established an equitable interest, through certain agreement of June 16th, 1893, and that the property was in the hands of a receiver of this Court, and that all parties to said agreement and said receiver had answered herein, disclaiming any right, title or interest in or to said property.

II.

The evidence does not sustain the judgment rendered on this cross-complaint,

III.

The court erred at the trial under the cross-complaint in admitting evidence offered by the defendants.

IV.

The Court erred at the trial under the cross-complaint in excluding evidence offered by the plaintiff.

V.

That the judgment is contrary to law, and the Court denied plaintiff's motion for a new trial, November 22, 1902, and the plaintiff gave notice of appeal in open court, and on November 24, 1902, filed its bill of exceptions.

Plaintiff filed statement of facts, November 26, 1902, under Section 1491, R. S. of A., 1901, which was struck out November 29, 1902, by the Court, on motion of defendant.

Plaintiff again filed statement of facts, December 10, 1902, under Section 1491, R. S. of A., 1901, which was struck out December 13, 1902, by the Court on motion of defendant.

Plaintiff prepares his bill of exceptions to the rulings of the Court and annexes all the circumstances and evidence necessary in explanation thereof, and presents the same to the judge trying said cause, and asks that it be certified to as correct, and signed by the judge, and filed as a part of the record — said cause, and the judge, having amended the same as to form, and having considered and acted on the amendments, objections and suggestions of the opposite side, certifies the same to be correct and affixes his official
33 signature hereto as of the date of November 24, 1902, as provided in Section 1466 of R. S. of A. of 1901, that being the date of the serving on defendant and of the filing of said bill in the clerk's office of this Court.

EDWARD KENT, *Judge.*

Endorsed. Filed Feb. 25, 1903. Elias F. Dunlevy, Clerk.

(Title omitted.)

Assignment of Errors.

Comes now the above named plaintiff and assigns in the above entitled cause the following errors:

1. That the Court erred in dismissing plaintiff's complaint, for the reasons set forth in Exception 1, of the bill of exceptions herein.

2. That the Court erred in allowing defendant, The Gila Water Company, to introduce in support of its cross-complaint the summons, complaint, exhibits and answers, in suit No. 1996 of this Court, for the reasons set forth in Exception 2, of the bill of exceptions herein.

3. That the Court erred in allowing defendant, The Gila Water Company, to introduce in support of its cross-complaint, the application for and the appointment of James McMillan, as receiver in suit No. 1728 for the reasons set forth in Exception 3, of the bill of exceptions herein.

4. That the Court erred in allowing defendant, The Gila Water Company, to introduce in support of its cross-complaint, the judgment of July 21st, 1894, and November 20th, 1894, for the reasons set forth in Exception 4, of the bill of exceptions herein.

5. The Court erred in refusing to allow plaintiff to show that there was no order directing the taking the property into the custody of the Court in suit No. 1996 in this Court, as is further shown in Exception 5, of bill of exceptions herein.

6. That the Court erred in refusing to allow plaintiff to show that there was no report of any officer, showing or tending to show that the property in controversy had ever been taken into custody of the Court in said suit No. 1996, and as is further shown in Exception 6, of the bill of exceptions herein.

7. That the Court erred, paragraph 13 of evidence, in refusing to allow plaintiff to introduce any evidence to show that the proceedings in said suit No. 1996 in this Court were void, and in ruling without first allowing plaintiff to offer said evidence.

That the double headings (being title and number of said
34 suits No. 1728 and 1996 in the report by James McMillan of sale to C. E. Crowley of January 3d, 1895, and of said double headings in the decree of this Court of January 10th, 1895, confirming said sale,) show that plaintiff had consented and that the Court had acted on the theory that said suits Nos. 1728 and 1996 were consolidated and that the said James McMillan was thereby conceded by plaintiff to be receiver in both of said suits.

It was error for the reason that the dates of said double headers show that they were long after said suit No. 1996 had been finally appealed from that term of Court ended, and the transcript had been delivered, also for the reason set forth in Exception 7, of the bill of exceptions herein.

8. That the Court erred in allowing defendant, The Gila Water

Company, to introduce the judgment of November 20th, 1894, in suit No. 1996, and in refusing to allow plaintiff to show that the Court had lost jurisdiction, for the reasons set forth in Exception 8 of the bill of exceptions herein.

9. That the Court erred in allowing defendant, The Gila Water Company, to introduce the report of a sale made by James McMillan, receiver, on January 5th, 1895, to one C. E. Crowley; also the Court erred in allowing said defendant to introduce the order of Court of January 10th, 1895, confirming said sale to said Crowley.

The same being immaterial and irrelevant said sale never having been perfected, as shown by paragraph 11 of evidence herein, and for the reasons set forth in Exception 9 of the bill of exceptions herein.

10. That the Court erred in allowing defendant, The Gila Water Company, to introduce the deeds to C. E. Crowley of January 10th, 1895, and to J. B. Greenhut of November 26th, 1898, for the reasons set forth in Exception 10 of the bill of exceptions herein, and the deed to said Crowley being immaterial and irrelevant said Crowley never having perfected said purchase, as shown by paragraph 11 of evidence herein.

11. That the Court erred in refusing to allow plaintiff to show that it filed a supplemental complaint in said suit No. 1728, after first serving the same on the attorneys of record in said suit, and that thereunder it attempted to maintain its rights, as shown by Exception 11 of the bill of exceptions herein.

12. That the Court erred in refusing to allow plaintiff to introduce evidence showing that under said suit No. 1728 plaintiff continued to attempt to protect its interest in the property in controversy, as late as April, 1902, as shown by Exception 12 of the bill of exceptions herein.

13. That the Court erred in refusing to allow plaintiff to show that receiver James McMillan was never authorized by any
35 order in said suit No. 1728 to dispose of the property in his hands as such receiver, as shown by Exception 13, of the bill of exceptions herein.

14. That the Court erred in refusing to allow plaintiff to introduce its motion of "bias and prejudice," thereby showing that the Court had lost its jurisdiction over said suit No. 1996, after the filing of said affidavit and motion, as shown by Exception 14 of the bill of exceptions herein.

15. That the Court erred in refusing to allow plaintiff to introduce appellant's briefs in said suit No. 1996, being suit No. 455 in the Territorial Supreme Court, for the purpose of showing what questions of jurisdiction had been presented to that Court, as shown by Exception 15 of the bill of exceptions herein.

16. That the Court erred in refusing to allow plaintiff to introduce the records of said suit No. 1996 to show that no jurisdiction over the RES had been acquired in that case, as shown by Exception 16, of the bill of exceptions herein.

17. That the Court erred in refusing to allow plaintiff to show that all the plaintiffs in said suit No. 1996 were stockholders in the defendants, the Arizona Construction Company and Peoria Canal Company, as shown by Exception 17 of the bill of exceptions herein.

18. That the Court erred in giving judgment for defendant, The Gila Water Company, and in not giving judgment for plaintiff, as shown by Exception 18 of the bill of exceptions herein.

19. That the Court erred in denying plaintiff's motion for new trial, as shown by Exception 19 of the bill of exceptions herein.

J. B. WOODWARD,
Attorney for Plaintiff.

(Title omitted.)

Affidavit in lieu of bonds to pay costs of Appeal or give security therefor. Section 1507, R. S. of A., 1901.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

Before me the Probate Judge of the above named County, appeared Lewis Wolfley, who being duly sworn, on oath says:

That he is president of the Gila Bend Reservoir & Irrigation Company, plaintiff in the above entitled action, and that said company is duly incorporated under the laws of Arizona, and is a bona-fide resident of said Territory.

Affiant further on oath states that said plaintiff has no property or other assets than those involved in this action, and that said plaintiff is absolutely unable to pay the costs of appeal or give security therefor.

36 This affidavit is made in lieu of bond to pay costs or give security therefor, as provided for in Section 1507, R. S. of A., 1901.

LEWIS WOLFLEY.

Sworn to and subscribed before me this 27th day of February, 1903.

[SEAL.]

J. C. PHILLIPS,
Probate Judge.

Supreme Court of the Territory of Arizona.

(Title of Cause.)

You will please take notice that I will move this court at the Court House in the City of Phœnix, County of Maricopa, Arizona, at the next meeting of said court, for an order to strike from the files of

this court the Abstract of Record filed by you herein, for the reasons specified in the annexed motion papers.

Dated, Phœnix, Arizona, April 3rd, 1903.

Yours, etc., C. F. AINSWORTH,
Attorney for Appellee.

To J. B. Woodward, Esq, attorney for appellant.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Comes now the above named appellee and moves this court to strike from the files of this court the Abstract of Record in the above entitled action, filed herein by the Appellant, for the reason that said Abstract of Record does not comply with Rule 1 of this court, entitled "Abstract of Record," in this,

1st. The Abstract of Record does not contain the Findings of Fact and Conclusions of Law of the District Court, made and filed in this cause.

2nd. The Abstract of Record does not contain or purport to contain a copy of any of the exhibits or any evidence, the exclusion of which by the District Court, the appellant urges as error.

3rd. The Assignments of Error embodied in the abstract of record do not contain a distinct and specific statement of the grounds of error complained of.

4th. The Abstract of Record does not contain or purport to contain a copy of any of the exhibits or the material portions thereof, nor the evidence which the appellant claims to have offered upon the trial of this cause, and the exclusion of which it alleges as error.

5th. The Abstract of Record does not contain or purport
37 to contain a copy of any of the exhibits or the material portions thereof, nor the evidence which the appellant claims was offered by the appellee upon the trial of this cause, and the admission of which the appellant claims was error.

6th. The Abstract of Record does not contain so much of the record as is necessary to inform the court of the errors relied on without an investigation of the record itself.

C. F. AINSWORTH,
Attorney for Appellee.

Endorsed: Service accepted this 4th day of April, 1903, J. B. Woodward, Attorney for Appellant,—No. 827. Supreme Court, Territory of Arizona. Gila Bend Reservoir & Irrigation Co., appellant, *vs.* Gila Water Co., appellee. Motion to strike Abstract of Record from files. C. F. Ainsworth, Attorney for Appellee. Filed April 21, 1903, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Comes now the Appellant in the above entitled Cause and shows to the Court:

That whereas Appellee has in its Brief herein called attention to the fact, that Appellant's transcript herein has failed to incorporate therein, the "findings of fact and conclusions of law" of the Trial Court, and,

Whereas said omission was unintentional on Appellant's part, and,

Whereas Appellant was not aware of said omission, until attention was called thereto by Appellee's brief, and,

Whereas the said "findings of fact and conclusions" of law were as follows, viz:

In the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa.

(Title of Cause.)

This cause coming on regularly to be heard before the Court without a jury on the 23rd day of October, 1902, the plaintiff appearing by its attorney, and the defendants herein appearing by their attorney and said defendants, excepting the Gila Water Company having filed their answer disclaiming any right, title or interest in or to the property mentioned and described in the complaint, or to any part thereof and the plaintiff having introduced its testimony to sustain the allegations of its complaint, whereupon on motion of the defendant the Gila Water Company, a corporation, the action of the plaintiff as against the defendants was dismissed, and there-
38 upon the defendant, The Gila Water Company, a corporation, introduced its testimony to sustain the allegations of its cross-complaint, and the arguments of the counsel for the respective parties in said action, having been submitted to the court, and court having taken the matter under advisement, and the court being fully and sufficiently advised in the premises, now on this 8th day of November, 1902, makes and files its findings of fact and conclusions of law herein.

Findings of Fact.

I.

The Court finds that the plaintiff the Gila Bend Reservoir and Irrigation Company and the defendants the Peoria Canal Company, The Valley Canal and Land Company and the Gila Water Company, are corporations duly organized under the laws of the Territory of Arizona, and have heretofore been doing business in the County of

Maricopa, Territory of Arizona, and that the defendant The Arizona Construction Company is a corporation duly organized under the laws of the State of Illinois, and has heretofore been doing business in the County of Maricopa, Arizona, and that C. F. Ainsworth is a resident of the City of Phœnix, Maricopa County, Arizona; that James McMillan, receiver, J. C. Wynd, H. C. Mann, J. B. Greenhut, W. E. Thorne and C. E. Crowley are non residents of the territory of Arizona.

II.

That all of the parties to this action have appeared herein by their attorneys, and that the Court has jurisdiction over the parties and the subject matter of the action.

III.

That all the defendants except the Gila Water Company, a corporation, filed herein their answer disclaiming any right, title or interest in or to the property or any part thereof, mentioned and described in the complaint herein and hereafter set forth; and thereupon the court finds that all of said defendants above named except The Gila Water Company, a corporation, have no right, title or interest in or to the property or any part thereof, mentioned and described in the complaint herein and hereinafter set forth.

IV.

That the plaintiff herein The Gila Bend Reservoir and Irrigation Company, a corporation, has not now and did not have at the commencement of this action any cause of action in respect to,
39 neither did it have and it has not now any right, title or interest in or to the property or any part thereof, mentioned and described in the complaint herein and hereinafter set forth.

V.

That the defendant The Gila Water Company, a corporation, was at the time of the commencement of this action and is now the owner in fee simple and in possession of, all of the property mentioned and described in the plaintiff's complaint herein and hereinafter set forth.

As Conclusions of Law the Court Finds:

I.

That the plaintiff's action should be dismissed as against all of the defendants herein, and that said defendants have and recover of and from the plaintiff, their costs and disbursements incurred herein.

II.

That the defendant The Gila Water Company, have judgment in accordance with the prayer of its cross-complaint, adjudging it and decreeing it to be the owner in fee simple and in possession of all of the property mentioned and described in the complaint herein and that the plaintiff and all of the other defendants be adjudged to have no right, title or interest in and to the said property or any part thereof, and that the plaintiff The Gila Bend Reservoir and Irrigation Company, a corporation, and all persons claiming or to claim said premises and property or any part thereof, through or under said plaintiff, be perpetually enjoined and forever barred and estopped from hereafter claiming any right, title or interest in or to the property or any part thereof, mentioned and described in the complaint herein and hereinafter set forth.

The property hereinabove referred to and described in the complaint herein, is described as follows:

(Description of property same as in Complaint, omitted here.)

Let judgment be entered herein accordingly.

Dated Phœnix, A. T., November 8th, 1902.

EDWARD KENT, *Judge.*

Therefore Appellant moves the Court for a diminution of the record, and that said "findings of fact and conclusions" of law be considered to all intents and purposes, the same as though said "findings of facts and conclusions" of law had formed part of said transcript.

J. B. WOODWARD,
Attorney for Appellant.

40 Endorsed: Service of copy accepted this 7th day of May, 1903. C. F. Ainsworth per I. J. L., Attorney for Appellee. No. 827. In the Supreme Court, Territory of Arizona, Gila Bend Reservoir & Irrigation Co., Appellant, *vs.* Gila Water Co., *et al.*, Appellees. Suggestion of Diminition of Record. Filed May 11, 1903, S. M. Cullom, Clerk.

In the Supreme Court of the Territory of Arizona.

(Title of Cause.)

Appeal from the District Court of Maricopa County. Hon. Edward Kent, Judge.

J. B. Woodward for Appellant, C. F. Ainsworth for Appellee.

Opinion by Sloan, J.

The Gila Bend Reservoir and Irrigation Company, brought suit in the court below. Alleging that it was the owner in fee simple of a

certain irrigating canal, with its branches; certain water rights connected therewith, and certain tracts of real estate in township, 2 north, range 5, west, Maricopa county, and asking that its title be quieted as against the Gila Water Company and certain other defendants who were alleged to claim interests adverse to it in said property.

The Gila Water Company answered setting up title in itself and asked that its title be quieted as against the plaintiff. The other defendants filed disclaimers and were dismissed from the suit.

The issues were tried by the court below and judgment rendered in favor of the Gila Water Company, dismissing plaintiff's complaint and decreeing the said Gila Water Company to be the owner in fee of the property in controversy.

The Gila Bend Reservoir and Irrigation Company moved for a new trial, which was denied, and, from this ruling and the judgment, has appealed to this court.

Upon the trial the Gila Water Company introduced in evidence to sustain its claim of title to the property in controversy, the record and judgment in a suit in which one W. H. Linn and others were plaintiffs and the Gila Bend Reservoir and Irrigation Co., and others were defendants, and known on the docket of the District Court of Maricopa County, where the suit was brought, as case number 1996.

The plaintiff, the Gila Bend Reservoir and Irrigation Company objected to the introduction of this judgment and record upon the ground of certain irregularities appearing upon the face of the
41 record which it claimed rendered the judgment open to attack in this proceeding. The rulings of the trial court, in admitting this record and judgment, constitute the essential grievance of the appellant.

It appears that in the District Court of Maricopa county, in the year 1893, the appellant brought suit against the Peoria Canal Company and the Arizona Construction Company and applied for a receiver therein to take possession of the property in controversy in this action. Thereafter the Court appointed one James McMillan as such receiver who took possession of the property and, by leave of the Court, issued a large amount of receiver's certificates to meet the expenses of necessary improvements upon the property. This suit was docketed as number 1728. Pending this action, one W. H. Linn, and others, brought suit in the District Court of Maricopa County, against the appellant and other defendants, alleging in their complaint, among other facts, the pendency of action number 1728, the appointment of the receiver and the issuing of the receiver's certificates, and praying, among other things, that the assets of the Gila Bend Reservoir and Irrigation Company be marshalled and that the receiver take possession of and be directed to sell the property of the said company and from the proceeds of said sale pay the debts adjudged due against it.

All the parties to this suit, including the Gila Bend Reservoir and Irrigation Company, appeared and answered. A trial was had and

judgment was rendered in which the receiver was directed to sell the property. The record further discloses that a sale was made under this judgment by the receiver, which was affirmed by the court, and a deed executed by the said receiver to the purchaser, who was one of the grantors of the appellee. This judgment was appealed from to this court where it was affirmed, and subsequently an appeal was taken by the appellant to the Supreme Court of the United States where the judgment of this court was affirmed. The latter suit in the court below was docketed as number 1996. The objection which the appellant urged in the court below to the judgment in cause number 1996 was that it appears upon the face of the record that the judgment, ordering a sale of the premises by the receiver, was without jurisdiction and void for the reason that no order was made by the court extending the receivership in suit number 1728 to cause number 1996. In passing upon this objection the trial court pointed out that all the parties in cause number 1728 were parties in cause number 1996, that, when the latter suit was brought, the property was in the hands of the court, through its receiver, and that after the bringing of cause number 1996, the record disclosed that the
42 court and all the parties, including the Gila Bend Reservoir and Irrigation Company, treated the property in possession of the receiver, appointed in cause number 1728, as though it had been placed in his possession as a receiver appointed in cause number 1996, and, further that orders were made by the court concerning said receivership which were entitled in both suits jointly, and held that, although no order was made consolidating the two suits and no order was in terms, made extending the receivership to the second suit, number 1996, the receivership was in fact extended to the second suit, and that the court, by its action, ratified the acts of the receiver in the second suit and thereby, in effect, extended his power and authority as such receiver to said second suit.

The view thus taken is amply justified by an inspection of the record in the two suits, and upon this ground alone the action of the trial court, in admitting the judgment, was correct.

The trial court did not err for another reason. The failure of the court, in case number 1996, to enter a formal order extending the receivership from cause number 1728 to cause number 1996, was not one which rendered the judgment complained of void upon its face but was a mere irregularity of practice which should have been taken advantage of during the pendency of the action.

As said by Mr. Justice Miller in Cooper *vs.* Reynolds, 10 Wallace, 308: "It is of no avail to show that there are errors in the record, unless they be such as to prove that the court has no jurisdiction in the case, or that the judgment rendered was beyond its powers. This principle has been often held by this court, and by all courts, and it takes rank as an axiom of the law."

In Cornett *vs.* Williams, 20 Wallace, 226, we find this expression of the Supreme Court: "The settled rule of law is that jurisdiction having attached to the original case, everything done within the

power of that jurisdiction, when collaterally questioned, is to be held conclusive of the rights of the parties, unless impeached by fraud.

It was within the power of the court to have extended the receivership in cause number 1728 to cause number 1996. It having jurisdiction of the property and the parties, the appellant had a right to object to the extension of the receivership so as to cover both cases without a formal order made and entered in that behalf. It could likewise have moved to set aside the judgment for this or any other, irregularity that affected it. If it did not take any such action it must be held to have waived the error. If it took any such action, the ruling of the court thereon, having been reviewed by this court and the Supreme Court, cannot now be reviewed in this suit,
43 and the judgment in cause number 1996, was conclusive and not subject to collateral attack by appellant.

The judgment is affirmed.

RICHARD E. SLOAN,
Associate Justice.

We concur.

FLETCHER M. DOAN,
Associate Justice.

GEO. R. DAVIS,
Associate Justice.

Endorsed. No. 827. The Gila Bend Reservoir and Irrigation Company, Appellant, *vs.* Gila Water Company, Appellee. Opinion by Sloan, J. Recorded Book 5, Pages 485–488. Filed March 26, 1904, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Motion for Rehearing.

Comes now the appellant and moves the court for a rehearing for the following reasons:

I.

Suit No. 1996 under which appellee claims title, was a suit *in rem*, for the sale of certain property therein described. No judgment was asked or given against the defendants, or any one of them.

The property was in the hands of a receiver in suit No. 1728.

The failure to make the receiver a party to suit No. 1996, or to consolidate said suits was jurisdictional and failure so to do rendered the entire proceedings in suit No. 1996 absolutely void, and the court erred in not so declaring.

II.

Failure to comply with the forms of law renders the entire proceedings *coram non judice*. . .

Dynes *vs.* Hoover, 20 How. 80.

Unless the jurisdictional facts appear the judgment is void.

Boswell *vs.* Otis 9 How. 350.

Galpin *vs.* Paige 18 Wall. 365.

Thompson *vs.* Whitman 18 Wall. 466.

And the court erred in not so declaring.

III.

When from any cause a Court has no jurisdiction of the
44 subject matter, neither an appearance or consent, nor pleading to the merits and going to trial, will give the court jurisdiction.

Vol. 12 Am. & Eng. Enc. 301.

And the court erred in not so declaring.

IV.

Failure to consolidate suits No. 1728 and 1996 before judgment rendered the judgment in suit No. 1996 absolutely void for want of jurisdiction over the *res*.

Guaranty Trust Co., *vs.* Green Cove R. R., 139 U. S. 146.

And the court erred in not so declaring.

V.

The finding that appellant treated the Receiver of suit No. 1728 as being also Receiver in suit No. 1996 is an error of fact, and contrary to the evidence.

VI.

In said suit No. 1996 appellant filed an affidavit of " bias and prejudice" and petitioned for a change of venue, as shown in paragraph 8 of evidence, page 25 of Transcript, and that appellant offered no defense in said suit No. 1996 as shown by exception 14, pages 26 of Transcript, and could not be held to have agreed to anything therein, and the court erred in not so declaring.

VII.

The findings that "Orders" were made entitled in both suits jointly is an error of fact, as the record shows, that no order was so made until after the appeal had been perfected and Transcript delivered in said suit No.1996 and then in only one single instance, and the sale of appellee was under orders headed only as 1996.

The order entitled with the double heading was made January 10th, 1895.

Paragraph 9 of evidence herein, page 36 of Transcript.

The Transcript on appeal in said No. 1996 was delivered on January 9th, 1895.

Paragraph 19 of evidence herein, page 44 of Transcript, and paragraph 11 of evidence herein, page 41 of Transcript, shows that the order of the Court confirming the sale to Greenhut, under which appellee derives its title, contained the heading of suit No. 1996 alone, and the court erred in not so declaring.

VIII.

That even had the trial court jurisdiction, the fraudulent collusion in said No. 1996 rendered the proceedings therein void, as shown in appellant's Brief herein, pages 25 to 29 inclusive.

45 That even had the trial court had jurisdiction it had lost jurisdiction before judgment by reason of the petition for a change of venue and the filing of the affidavit of bias and prejudice, as shown in Exception 14 herein, page 26 of Transcript, and paragraph 8 of evidence herein, page 35 and as is argued in appellant's Brief, pages 37 to 40 inclusive, and the court erred in not so declaring.

IX.

That even had the trial court had jurisdiction it had lost jurisdiction prior to the judgment of November 20, 1894 under which appellee derives title which was rendered "in lieu" of the judgment of July 21st, 1894, appellant having perfected an appeal from said judgment of July 21st, 1894 as shown by paragraph 18 of evidence herein, page 43 of Transcript, and as argued in appellant's Brief, pages 40 to 44 inclusive and the court erred in not so declaring.

J. B. WOODWARD,
Attorneys for Appellant.

Endorsed. Service of copy accepted this 4th day of April, 1904, C. F. Ainsworth, Attorney for Appellee.—No. 827. Supreme Court of the Territory of Arizona. Gila Bend Reservoir & Irrigation Co., plaintiff and appellant, *vs.* The Gila Water Co., defendant and appellee. Motion for rehearing. Filed April 4, 1904, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Affidavit of Value.

Comes now the Appellant, through its President, Lewis Wolfley, who being first duly sworn, makes affidavit, that the values involved in the above entitled cause, far exceeds the sum of five thousand dollars, and this affidavit is made in compliance with, and is intended

to comply with the United States Statute governing appeals from the Territorial Supreme Court to the United States Supreme Court.

LEWIS WOLFLEY.

TERRITORY OF ARIZONA, *County of Maricopa, ss:*

Before me, Lavina M. Andrews, a Notary Public in and for said County and Territory, on this day personally appeared Lewis Wolfley known to me to be the person whose name is subscribed to the foregoing instrument as President of the Gila Bend Reservoir and
46 Irrigation Company, and acknowledged to me that he executed the same for said company, and swears the same is true.

Given under my hand and seal of office, this 31st day of October, A. D., 1904.

LAVINA M. ANDREWS,
[SEAL.] *Notary Public.*

My commission expires Sept. 26, 1908.

Endorsed.—No. 827. Supreme Court of the Territory of Arizona. Gila Bend Reservoir and Irrigation Company, appellants, *vs.* The Gila Water Company, appellee. Affidavit of Value. Filed Oct. 31, 1904, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Motion of Appellee for an order directing the return of the record and papers herein to the Clerk of the District Court.

Comes now the above named appellee, and shows to this court that heretofore this court rendered its decision herein affirming the decision of the District Court of the Third Judicial District of the Territory of Arizona, in and for Maricopa County, in favor of the above named appellee. That upon the rendering of such decision as aforesaid, the appellant herein moved this court for a rehearing, but that this court denied such motion. That more than fifteen days have elapsed since the denial to the appellant of such rehearing, and that no appeal to the Supreme Court of the United States has as yet been perfected.

That all of the above matters appear more fully from the records of this court to which reference is hereby made as a part of this motion.

Therefore, for the reasons above stated, appellee herein respectfully moves this court for an order directing the remittance of the record and all papers in the above action, by the clerk of the Su-

preme Court of the Territory of Arizona, to the Clerk of the District Court of the Territory of Arizona, in and for Maricopa County, in the form and manner required by the Statute in such case made and provided. Respectfully submitted.

C. F. AINSWORTH,
Attorney for Appellee.

Endorsed. No. 827. In the Supreme Court of the Territory of Arizonia. Gila Bend Reservoir and Irrigation Company, Appellant, *vs.* Gila Water Company, Appellee. C. F. Ainsworth, Attorney for Appellee. Motion for Remittitur. Filed January 9, 1905, S. M. Cullum, Clerk.

Service of the within copy admitted this 9th day of January, 1905.

Attorney for Appellant.

47 Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Motion of the Appellant to Deny Remittitur.

Comes now the above named appellant and shows to the Court that after its motion for rehearing had been denied by this Court, appellant filed motion for "Findings of Fact in the nature of a special verdict" as contained in said motion.

Appellant further shows to the Court that it has no knowledge of any action being taken upon said motion for Findings of Fact in the nature of a special verdict, or that any facts in the nature of a special verdict have as yet been found by the Court, and that appellant has therefore been unable to make its assignment of errors and perfect its appeal.

Appellant further shows to the Court that the Revised Statutes of the United States, Sections 702 and 1008, provide that appellant should have two years within which to perfect and make good its appeal.

And therefore appellant prays the Honorable Court to deny the motion of the appellee for a remittitur upon the ground that "no appeal to the Supreme Court of the United States has now been perfected" by appellant.

J. B. WOODWARD,
Attorney for Appellant.

Endorsed.—No. 827. In the Supreme Court of the Territory of Arizona. Gila Bend Reservoir & Irrigation Co., *vs.* Peoria Canal Company, *et al.* Motion to Deny Remittitur. Filed January 13, 1905, S. M. Cullum, Clerk.

(Title of Court and Cause.)

Supreme Court of the Territory of Arizona.

Statement of facts in this case in the nature of a special verdict made by the supreme court of the Territory of Arizona, and also rulings of the court below on the admission and rejection of evidence as excepted to on the foregoing transcript of the record in the above entitled cause, to be used by appellant herein in its appeal to the Supreme Court of the United States.

48 That the above entitled cause was tried in the Court below upon the complaint which was the statement of a cause of action to quiet title to the property described in said complaint against the defendants therein mentioned; the amended answer of the Gila Water Company, one of the said defendants, denying the plaintiff in said complaint being the owner of the property therein described, said defendant further alleging peaceable and adverse possession of the property described in plaintiff's complaint under the title and color of title for more than three years preceding the date of the commencement of the above action, and also alleging peaceable and adverse possession of said property for more than five years before the commencement of the suit using and enjoying the same, paying taxes thereon, claiming under deeds duly recorded; the cross complaint of said defendant, Gila Water Company, claiming to be the owner in fee simple of all the property described in plaintiff's complaint in said cause; and the answer of appellant herein to said Gila Water Company's cross complaint;

That all of the other defendants mentioned in said complaint answered and disclaimed any right, title and interest in and to the property described in said complaint.

That this Supreme Court adopts and makes a part of this statement of facts the Bill of Exceptions in this case, Part I, Exceptions, Part II, Circumstances and Evidence, as certified and signed on the 24th day of November, 1902, by Hon. Edward Kent, the Presiding Judge who tried this cause below, the same as if it were set forth at length herein:

That no order was made in the court below consolidated the case known as No. 1728 in the trial court and the case known as No. 1996 in the same court, said cases being those the record of which is referred to in the above mentioned Bill of Exceptions;

That the receiver appointed in said case No. 1728 made the sale and executed the deed under which the Gila Water Company, appellee, claims title to the property in dispute; that no order was in terms made extending the receivership in said case No. 1728 to said case No. 1996, the latter case being the one in which said receiver made said sale and by the judgment rendered therein assumed to convey the title to said property; that the only orders made in said case No. 1996 relating to said receivership are those dated May 29,

1894, November 23, 1898, July 21, 1894, November 20, 1894 and January 10, 1895, referred to in said Bill of Exceptions.

That from the foregoing record and facts, the Court finds that plaintiff and appellant herein, Gila Bend Reservoir and Irrigation Company, a corporation, has not and did not have at the commencement of this action any cause of action in respect to, nor did it have and has not now any right, title or interest in and to the
49 property or any part thereof mentioned and described in the complaint herein; that the defendant-appellee, Gila Water Company, a corporation, was at the time of the commencement of this action and is now the owner in fee simple and in possession of all the property mentioned and described in plaintiff's complaint herein.

Allowed and certified by the Court this 21st day of February, 1905.

RICHARD E. SLOAN,
Associate Justice, Presiding.

Endorsed: No. 827. In the Supreme Court of the Territory of Arizona. Gila Bend Reservoir and Irrigation Company *vs.* Peoria Canal Company, *et al.* Statement of Facts in the nature of a Special Verdict. Filed February 23, 1905. S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Petition for Appeal.

Comes now the above named appellant and believing itself aggrieved by the final judgment entered by the Supreme Court of the Territory of Arizona on the 26th day of March, 1904, in the above entitled cause, in which the judgment of the District Court of the Third Judicial District of the Territory of Arizona was affirmed, and which said judgment of the said Supreme Court was rendered on the appellant having brought said judgment of said District Court to said Supreme Court for review on appeal, praying for the reversal of the same and remanding it back to said court below for a new trial, appellant having heretofore filed its affidavit showing the value of the matter in dispute, to-wit: the value of the property in controversy, exceeding the sum of Five Thousand Dollars,

Therefore, the said appellant hereby appeals from said judgment of said Supreme Court of the Territory of Arizona to the Supreme Court of the United States and prays that its appeal may be allowed, that the amount of the cost bond on appeal be fixed by order of this Court, that proper citation be issued herein, and that a transcript of the record and proceedings, judgment, decision and opinion, together with the statement of facts in the nature of a special verdict

in this cause be certified and duly authenticated and sent to the Supreme Court of the United States.

J. B. WOODWARD,
Attorney for Appellant.

Endorsed: No. 827. In the Supreme Court of the Territory of Arizona. Gila Bend Reservoir and Irrigation Company, *vs.* Gila Water Company. Petition for Appeal. Filed March 13, 1905, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Now on this 13th day of March, 1905, the appeal prayed for in the foregoing petition is hereby allowed, the value of the matter in dispute, to-wit: the value of the property in controversy, exceeding the sum of Five Thousand Dollars, citation to issue on appellant filing a bond in the penal sum of One Thousand Dollars with good and sufficient sureties as is required by law to be approved by an Associate Justice of the Supreme Court of the Territory of Arizona, and remittitur stayed for sixty days.

RICHARD E. SLOAN,
Associate Justice of the Supreme Court of the Territory of Arizona.

Endorsed.—No. 827. In the Supreme Court of the Territory of Arizona. Gila Bend Reservoir and Irrigation Company, *vs.* Gila Water Company. Allowance of Appeal. Filed March 13, 1905, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

(Title of Court and Cause.)

Know all men by these presents:

That we, The Gila Bend Reservoir and Irrigation Company as principal, and the United States Fidelity and Guaranty Company, as surety, do hereby acknowledge ourselves to be firmly held and bound to the Gila Water Company, the Appellee herein in the sum of One Thousand Dollars to be paid to it, its successors or assigns, for which payment well and truly to be made we bind ourselves and each of us, and each of our successors and assigns, both jointly and severally, firmly by these presents:

The condition of the above obligation is such that the above named appellant has prayed for and been granted an appeal herein to the Supreme Court of the United States upon filing a bond in the penal

sum of one thousand dollars, with good and sufficient sureties as required by law, to be approved by an Associate Justice of the Supreme Court of the Territory of Arizona;

Now Therefore, if said appellant and principal herein shall prosecute its appeal to effect and if it fails to make its plea good shall answer and pay all costs herein, then this obligation to be void, otherwise to remain in full force and effect.

51 Witness our hands and seals this 13th day of March, 1905.

GILA BEND RESERVOIR AND IRRIGATION COMPANY,
By LEWIS WOLFLEY, *President.*

Attest: J. B. WOODWARD, *Secretary.*

Seal of the Gila Bend Reservoir and Irrigation Co.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By THOS. ARMSTRONG, JR., *Its Attorney in Fact.*
By E. GANZ, *Its Attorney in Fact.*

Seal of the United States Fidelity and Guaranty Company.

I, Richard E. Sloan, Associate Justice of the Supreme Court of the Territory of Arizona, hereby approve the within bond and the sufficiency of the surety thereto this 13th day of March, 1905.

RICHARD E. SLOAN,
Associate Justice of the Supreme Court of the Territory of Arizona.

Endorsed.—No. 827. In the Supreme Court of the Territory of Arizona. Gila Bend Reservoir and Irrigation Company *vs.* Gila Water Company. Bond on Appeal. Filed March 17, 1905, S. M. Cullom, Clerk.

Supreme Court of the Territory of Arizona.

Be it remembered that heretofore and on to-wit the 11th day of January, A. D., 1904, the same being one of the regular juridical days of the January Term, A. D., 1904, of said Court the following order *inter alia,* was had and entered of record in said court, in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

It is ordered that the Motion to Strike Abstract of Record from files, filed herein by Appellees, be submitted.

And afterwards and upon to-wit the 12th day of January, A. D., 1904, the same being one of the regular juridical days of the Janu-

ary Term, A. D., 1904, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

It is ordered that the Motion to Strike Abstract of Record from the files, filed herein by appellees, and heretofore submitted, be and the same is, hereby denied.

And afterwards and upon to-wit the same day the following
52 other order was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

On motion of J. B. Woodward, Esq., attorney for appellant herein, it is ordered that this cause be submitted on briefs.

And afterwards and upon to-wit the 26th day of March, A. D. 1904, the same being one of the regular juridical days of the January Term, A. D. 1904, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

This cause having been heretofore submitted and by the Court taken under consideration and the Court having considered the same and being fully advised in the premises: It is ordered that the judgment of the District Court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed, that the Appellee herein, do have and recover of and from the Gila Bend Reservoir and Irrigation Company, a corporation, Appellant herein, its costs in this court, taxed at twenty-nine and 25-100 ($29.25) dollars, and its costs in the court below in this cause incurred.

And afterwards and upon to-wit the 6th day of May, A. D. 1904, the same being one of the regular juridical days of the January Term, A. D., 1904, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

At this day, on Motion of J. B. Woodward, Esq., it is ordered by the Court that the appearance of Bissell Thomas be entered herein as associate counsel for Appellant.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

In this cause, it is ordered that the Motion for Rehearing filed herein by Appellant, be and the same is hereby submitted.

53 And afterwards and upon to-wit the 7th day of May, A. D., 1904, the same being one of the regular juridical days of the January Term, A. D., 1904, of said Court, the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

In this cause it is ordered that the Motion for Rehearing, filed herein by Appellant, and heretofore submitted, be and the same is hereby denied.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

Comes now Bissell Thomas, Esq., attorney for Appellant herein, in open court, and gives notice of appeal from the judgment of this Court, to the Supreme Court of the United States, and moves the Court that the appeal be allowed.

It is ordered by the Court that said motion be granted and the appeal be and the same is hereby allowed.

And afterwards and upon to-wit the 9th day of January, A. D. 1905, the same being one of the regular juridical days of the January Term, A. D. 1905, of said Court the following order, *inter alia*, was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

In this cause, it is ordered that the Motion for Remitt-tur filed by Appellees, be submitted.

And afterwards and upon to-wit the 11th day of January, A. D. 1905, the same being one of the regular juridical days of the January Term, A. D. 1905, of said Court the following order, *inter alia*,

was had and entered of record in said Court in said cause, which said order is in words and figures, as follows, to-wit:

(Title of Cause.)

It is ordered that Appellee's Motion for Remittitur, filed herein, and heretofore submitted, be and the same is hereby denied.

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to The Gila Water Company, appellee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within sixty days from the date hereof, pursuant to an appeal, filed in the clerk's office of the supreme court of the Territory of Arizona wherein The Gila Bend Reservoir and Irrigation Company is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States this 25th day of March, in the year of our Lord one thousand nine hundred and five.

[Seal Supreme Court of Arizona.]

RICHARD E. SLOAN,
Associate Justice of the Supreme Court of the Territory of Arizona.

Witness the seal of said court.
S. M. CULLOM,
Clerk Supreme Court of Arizona,
By ANGIE B. PARKER, *Deputy.*

55 [Endorsed:] No. 827. In the Supreme Court of the United States. Gila Bend Reservoir and Irrigation Company, appellant, *vs.* Gila Water Company, appellee. Citation. Filed March 28, 1905. S. M. Cullom, clerk.

I hereby acknowledge the service of the within citation and the receipt of a copy thereof, this 28th day of March, 1905.

C. F. AINSWORTH,
President of the Gila Water Company, and Attorney for Fila Water Company, Appellee.

56 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Territory of Arizona, ss:*

I, Shelby M. Cullom, clerk of the supreme court of the Territory of Arizona, do hereby certify the foregoing pages numbered from 1 to 53 inclusive, to be full, true and correct copies of the complaint, answer, amended answer of Gila Water Company, answer to cross complaint, minute entries of lower court of October 13, 24, 25 and November 8, 14 and 15, 1902, judgment, motion for new trial, bill of exceptions, assignment of errors, affidavit in lieu of bond, motion to strike abstract of record from files, suggestion of diminution of record, opinion, motion for re-hearing, affidavit of value, motion for remittitur, motion to deny remittitur, statement of facts in the nature of a special verdict, petition for appeal, allowance of appeal, bond on appeal, and all orders and proceedings of said court had and entered of record in the case of Gila Bend Reservoir and Irrigation Company appellant, against the Gila Water Company, appellee, as the same remain of record and on file in my office.

I further certify that the citation attached hereto is the original citation issued by said supreme court of the Territory of Arizona, in said above entitled cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Phœnix, Arizona, this 1st day of April, A. D., 1905.

[Seal Supreme Court of Arizona.]

SHELBY M. CULLOM,
Clerk Supreme Court of Arizona.

Endorsed on cover: File No. 19,708. Arizona Territory supreme court. Term No. 226. Gila Bend Reservoir and Irrigation Company, appellant, *vs.* The Gila Water Company. Filed April 13th, 1905. File No. 19,708.